

## **MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE**

Friday, February 1, 2008

A regular meeting of the Corporations Committee (the “Committee”) of the Business Law Section of the State Bar of California was held in San Francisco, California at the Westin Hotel, California, on Friday, February 1, 2008. Attendance was as follows:

### **MEMBERS PRESENT:**

Richard Burt\*  
W. Derrick Britt  
Nelson Crandall  
Edward A. Deibert  
Christopher Delfino  
Samuel C. Dibble  
Sharon R. Flanagan  
Michael I. Froch  
Bryan Gadol  
Steven Harmon  
Jeffrey Hartlin  
David Hernand\*  
Nina Hong\*  
Barbara Mathews  
Mike Occhiolini  
Charles Ortmeyer  
David Serepca  
James J. Thompson\*  
Rose Sorensen\*

### **MEMBERS ABSENT:**

Russ Wood  
Jennifer Sostrin  
Bruce Deming  
Anne Marie Peters

### **LIAISONS AND GUESTS PRESENT:**

Saul Bercovitch\*  
Steven Hazen\*  
Ken Reed  
Todd Vlaanderen  
Stewart McDowell

\*Via Telephone

The minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the

order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

## I. ADMINISTRATIVE MATTERS

1. Opening Remarks and announcements: The meeting was called to order by Co-Chairs at 9:30. All members, liaisons and guests introduced themselves. Chris Delfino discussed the March 7, 2008 meeting in Sacramento and that notice would be sent to the members of this Committee regarding the upcoming meeting and luncheon.

3. Approval of Minutes: Minutes were approved unanimously.

## II. AGENCY AND LIAISON'S REPORTS

1. Securities and Exchange Commission: No report.

2. Department of Corporations: No report.

3. Secretary of State: Todd Vlaanderen of the Secretary of State's office was in attendance in San Francisco. The Liaison's report focused on a UCC website update, due to launch in the spring of 2008. The process was lengthy and detailed, but the SOS looked forward to the site coming on-line again soon.

4. Office of Governmental Affairs: The e-proxy ALP update was provided by Saul Bercovitch. Senator Ackerman's staff recommended that the bill move forward. The suggestion was made that if the Committee is interested in moving forward legislation, then the OGA would assist. The Committee had circulated a legislative toolkit. Stewart McDowell would speak at this meeting. A purpose of the toolkit was to identify an existing problem prior to seeking its legislative solution. Saul further discussed SB 294 and that the bill is officially dead. The OGA liaison concluded without action taken by the Committee.

5. BLS Committee Liaison Reports:

A. ADR: Steve Harmon next provided a report on the activities of the ADR Committee. They met on Tuesday January 29, 2008 and announced the participation of Eric Bolton at the Committee meeting. ADR is working on a business lawyer guide to ADR that they are submitting in mid-February and continuing to work on programs for the annual meeting, such as a program of interest to in-house attorneys. They are also working to update their website.

B. Cyberspace Law: James Thompson discussed the meeting held on January 10, 2008. First summarized was the Cyberspace Committee reducing a monthly 3 hour meeting to one hour. The Cyberspace Committee is interested in the Corporation Committee's activities, mission and membership. The liaison next discussed topics that would be addressed at the SEI in San Diego next month. Cyberspace's e-commerce subcommittee is working on a web privacy guide project and primer for the legislature. As of the date of the Cyberspace meeting

Congress was expected to act shortly on a data security and collection. A brief discussion ensued on WTO rulings, on-online gambling companies here and in the U.S.

C. Financial Institutions: Michael Occhiolini discussed Regulation R which is designed to replace Regulation D. Regulation R creates an exemption for networking arrangements and sweep accounts, among other things. The liaison also discussed a presentation moving forward on drafting ADR provisions and on internet gambling. A Financial Institutions webinar is scheduled for February 6, 2008.

D. Non-Profit Corporations: Jeff Hartlin next gave a report of the activities of the Non-Profit Corporations Committee. The non-profit committee met Tuesday and concerned mostly their website, encouraging membership growth. The liaison discussed that there were no ALP's currently pending and that the committee desired to become more involved in providing webinars and seminars.

E. Partnerships and LLCs: Sherry Flanagan gave a report on the activities of the Partnerships and LLC's committee. The committee discussed an LLP guide that they are working on and completion of the guide. The liaison also reported that the next meeting of the committee is next week. Subcommittee elected, members of which are as follows: S. Harmon, E. Deibert, M. Occhiolini and D. Hernand.

F. UCC: No report.

G. Insolvency. David Serepca discussed that the Insolvency committee has an upcoming Valentines 9<sup>th</sup> Circuit review program in February. The liaison also gave an update on upcoming programs such as on enforcing foreign judgment liens. The liaison is considering attending a meeting in person in San Diego next month.

H. Executive Committee: Stewart McDowell discussed the toolkit package that was provided to all members. The memorandum was targeted to encourage the Corporations Committee and other standing committees to participate greater in the public comment process. The memorandum's attempt is to make the process user-friendly. The Executive Committee liaison further discussed the memorandum without any further action required by the Corporations Committee.

### III. SUBCOMMITTEE REPORTS

1. Opinion Report: No report.

2. Legislation:

A. ALP re Code 1501 to facilitate e-proxies: Senator Ackerman's staff recommended the ALP to the Senator to put forward as a bill.

- B. Potential ALP re: 301.5 and 25219: D. Britt submitted a comment letter to the Maintenance of the Codes Bill to the Executive Subcommittee for legislation.
- C. Legislation Update: Saul Bercovitch and Derrick Britt gave an update on legislation and ALP's pending discussed elsewhere in these minutes.
- D. Close Corporation. David Serepca gave a review of the status and that a meeting took place in January with sub-committee members Russ Wood and Michael Froch. In February there will be a further meeting and then drafting.
- E. SB 294. The bill as reported by Saul Bercovitch is dead. Chris Delfino discussed the history of the bill and progress in the Judiciary Committee. The Co-Chairs discussed the approach and Chris and Barbara Mathews explained that perhaps a better approach would be to wait and reevaluate. Following this reevaluation, then there would first be a discussion with the Judiciary Committee staff to elicit their support and solve the problems and concerns they have. Chris suggested there be a sub-committee created to handle the details of this and to also address the concern that it doesn't harm investors. The goal articulated by the Co-Chairs was to work toward a new ALP. Steve Harmon inquired as to whether the staff would meet with this sub-committee. A discussion continued with Steve Hazen, Michael Occhiolini, Barbara Mathews, David Serepca, and Chris Delfino. No further action was taken.
- F. SEC Certificate of Issues to the California Supreme Court. Discussion regarding whether SEC should have this right in California. C. Delfino to California Secretary of State to discuss further and S. McDowell to contact a member of her firm also address.

3. Communications/ Website: Ed gave the report.

A. Collaboration Site: There was discussion as to further organization of the collaboration site. The Committee discussed having folders on the home page, with for example an ongoing projects folder or historical projects folder. Should any questions exist as to location of an item on the site, direct the question to Ed Deibert.

B. Website Committee: There was discussion on the organization of the website, including suggested links on the site, left and right side, of the home page. In terms of updating the site, there is a need for involvement by some of the members in assisting with the process. Chuck Ortmeier volunteered regarding case updates and Mike Occhiolini discussed that there should be a message from the Co-Chairs. It was stressed that the update is critical since the meetings produce so much information that is not making it on the site.

C. E-Bulletin Topics:

(i) Misleading Minute Service: Rose's e-buletin was sent out last week. Russ is working on an e-bulletin on S186.

(ii) E-Proxy ALP: The e-bulletin is still on hold pending further developments.

(iii) Others: Chris Delfino suggested adding an e-bulletin on the Rule 144 amendments and that another potential e-bulletin could focus on Rule 507, on the new rules for capital formation (specifically the sales to large accredited investors). The e-bulletin topics would be discussed further outside of the present meeting.

4. Education/ Publications: Sam Dibble gave a report without any further action required by the Committee.

A. Programs: Sam Dibble briefed the Committee on upcoming education, including a webinar and ethics program.

B. Publications/BLN Article: It was discussed that March is the Committee's opportunity to submit articles for publication. Rose Sorensen did submit an article.

5. Corporate Law Report: Chuck Ortmeier gave the report on the announcement of the merger of CLDC with the Corporations Committee. The plan encompasses aggressive communications. He suggested that there could be a corner of the Corporations Committee website for items of interest to in-house counsel.

6. Litigation: Chuck Ortmeier also led a follow-up discussion on cases raised at the last meeting of the Committee. He discussed privilege, back-dating of options, waiver of privilege, and briefed the committee on the *CITI Group* case, and other opinions as well. Steve Hazen discussed the a case where documents were left on a conference table and a separate case involving a lawyer leaving a voicemail message for another lawyer who thought that he had hung up the phone. However, the voicemail continued and the issue was whether the information on the voicemail would be admissible. [Cite? Jazman v. Marvel is on appeal to the California Supreme Court]. .

#### IV. ONGOING PROJECTS:

1. Section 2115 Project: No report.

2. Business Entity Name Issues: No report.

3. Comment Letter to Department of Corporations Regarding Proposed Regulations on Hedge Fund Advisors: There was a discussion on the comment letter and the completion of the initial draft. Derrick Britt and Jeff Hartlin were commended for their work on the letter.

4. Privilege Issues:

A. ABA Task Force on Attorney-Client Privilege: Steve Hazen gave a report on the recent meeting in January 24, 2008 which he attended in person in Washington, DC. Michael Froch attended via telephone. The task force discussed two major topics, a review of a GSA matter and the attorney client privilege with respect to audits and auditors. This later topic gathered most of the attention. There is concern about the audit process and where confidentially and privilege arise. Some members of the Task Force have been concerned that the Task Force is moving too slowly. The liaison gave a status on the Attorney Client Protection Act and discussed that the bill's challenge is to pass Senate hurdles. The Vermont bar is lobbying in support of the legislation to the Chairman of the Judiciary Committee.

B. Office of Rural Legal Assistance: No report.

V. New Business: None

Meeting adjourned at 11:49 A.M.

Respectfully Submitted,

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Michael I. Froch, Acting Secretary